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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 766

MILK CONTROL COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

vs.

CLARENCE GREEN, TRADING AS GREEN'S DAIRY; G. P. JULIUS, TRADING AS JULIUS' DAIRY; JAMES SUTCLIFF, OF ARNOLD ICE CREAM COMPANY; GEORGE M. COOPER, TRADING AS QUALITY AND SERVICE DAIRY; R. E. NOGLE, TRADING AS SHILOH DAIRY; PAUL J. BECK, TRADING AS BECK'S DAIRY; R. H. EISENHART, TRADING AS EISENHART'S DAIRY; J. B. WARNER OF WARNER AND SONS' DAIRY; WALTER C. HOWE, TRADING AS HOWE'S DAIRY; PAUL E. LANDIS, TRADING AS LANDIS DAIRY; RYDER'S DAIRY, INC.; CHARLES A. HOAK, TRADING AS HOAK'S MODERN DAIRY; G. P. PARTHEMORE AND SONS, A PENNSYLVANIA CORPORATION; LOUIS J. MALLOY, OF MALLOY'S DAIRY; H. W. ERDMAN, OF LYKENS DAIRY; EDWARD HONICKER, TRADING AS HONICKER'S DAIRY; EARL H. FETTER, TRADING AS FETTER'S DAIRY,

Plaintiffs,

AND TITUSVILLE DAIRY PRODUCTS COMPANY, A PENNSYLVANIA CORPORATION,

Intervening Plaintiff.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

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Attorney General of Pennsylvania,
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Deputy Attorney General,
Counsel for Petitioner.

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Plaintiffs,

AND TITUSVILLE DAIRY PRODUCTS COMPANY, A PENNSYLVANIA CORPORATION,

Intervening Plaintiff.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Milk Control Commission of the Commonwealth of Pennsylvania, petitioner herein, respectfully prays that a writ of certiorari issue to review the order of the Supreme

Court of Pennsylvania entered October 28, 1940, and the order of said court refusing reargument entered November 26, 1940, to No. 6 May Term 1941, in said court.

Opinion Below.

The opinion of the Supreme Court of Pennsylvania, delivered by Chief Justice Schaffer, with whom three other Justices concurred, is reported in 340 Pa. 1, 16 Atlantic Reporter, 2nd Series, page 9, and also appears in the record of the present proceedings (R. 463). A dissenting opinion was filed by Mr. Justice Stern, in which Mr. Justice Patterson joined. It is reported in 340 Pa. 4, 16 Atlantic Reporter, 2nd Series, page 10, and also appears in the record of the present proceedings (R. 465). The opinion of the court entered October 28, 1940, affirms the decree entered by the Court of Common Pleas of Dauphin County. The opinions of the latter court are reported in 48 Dauphin County Reporter, pages 385 and 416; they also appear in the printed record before the Supreme Court of Pennsylvania filed herewith, pages 292a and 352a. Dissenting opinions filed by the Sitting Chancellor in that court are reported in 48 Daughin County Reporter, pages 403 and 419. They also appear in the printed record before the Supreme Court of Pennsylvania filed herewith at pages 318a and 356a.

Jurisdiction.

The order of the court below, the Supreme Court of Pennsylvania, was entered October 28, 1940 (R. 463). A petition for reargument filed in the same court was denied November 26, 1940 (R. 509). By orders entered December 5, 1940, and February 5, 1941, the record of the court below is being held there pending the outcome of the present petition (R. 510, 513). The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code as amended, 28 U. S. C. 344 (b).

The question of the violation of the equal protection clause of the 14th Amendment to the Constitution of the United States was raised in the Supreme Court of Pennsylvania in the brief on behalf of petitioner filed therein, pages 36-39 inclusive (R. 404-407), and enlarged upon in paragraph 10 of the Petition for Reargument, pages 11-14 of the printed petition (R. 483-486). Printed copies Brief and Petition for Reargument filed with the Supreme Court of Pennsylvania have been filed with this petition.

Questions Presented.

1. Does a State statute purporting to regulate the entire milk industry of the State, including the handling of milk by producers and milk dealers generally, violate the equal protection clause of the 14th Amendment to the Constitution of the United States when, as construed by the highest court of the State, it provides that milk dealers who *buy* milk from producers must pay minimum prices prescribed by a Milk Control Commission, but milk dealers who sell or handle milk *on consignment* from producers are not subject to the price-fixing provisions of the statute?

2. Does a State statute purporting to regulate the entire milk industry of the State, including the handling of milk by producers and milk dealers generally, violate the equal protection clause of the 14th Amendment of the Constitution of the United States when, as construed by the highest court of the State, it provides that milk dealers who *buy* milk from producers must file bonds with the State for the protection of producers, but milk dealers who sell or handle milk *on consignment* from producers need not comply with the bonding provisions of the statute?

Statute Involved.

The Milk Control Law of the Commonwealth of Pennsylvania, enacted April 28, 1937, P. L. 417, 31 PS Section 700j,

is the statute involved. That act substantially reenacted and superseded the Milk Control Board Law of January 2, 1934, Special Session P. L. 174, as amended by the Act of April 30, 1935, P. L. 96. The Milk Control Board Law was declared constitutional by the Supreme Court of Pennsylvania in the cases of *Rohrer* v. *Milk Control Board*, 322 Pa. 257, 186 A. 336 (1936), and *Eisenberg Farm Products* v. *Milk Control Board*, 332 Pa. 34, 200 A. 854 (1938), reversed by the Supreme Court of the United States on another ground in 306 U. S. 346, 59 S. Ct. 528 (1939). The Milk Control Law of 1937 was declared constitutional by the Supreme Court of Pennsylvania in *Colteryahn Sanitary Dairy* v. *Milk Control Commission*, 332 Pa. 15 (1 A. (2d) 775) (1938). In *Harrisburg Dairies, Inc.* v. *Eisaman, et al.*, 338 Pa. 58, 11 A. (2d) 875 (1940), the Supreme Court of Pennsylvania declared that the bonding provisions of the Milk Control Law were constitutional beyond doubt.

The Supreme Court of Pennsylvania in the decision appealed from has stated that the Milk Control Law of 1937 contains an arbitrary and capricious discrimination between some milk dealers and others, and some milk producers and others, and have held that the Commonwealth of Pennsylvania, through the Milk Control Commission, has no power to regulate minimum prices to be paid milk producers unless they sell their milk outright to the milk dealers, and no power to require milk dealers who receive milk on consignment to file bonds for the protection of milk producers, although the Commonwealth does have the power and duty to require bonds of milk dealers who buy milk from producers.

The portions of the Milk Control Law involved read as follows:

"Preamble.

"WHEREAS, The production, sale and distribution of milk and certain milk products in this Commonwealth,

are attendant with serious conditions affecting milk producers, milk dealers and consumers of milk, the following legislative findings of fact with respect thereto are hereby made:

"1. Milk is the most necessary human food, vital for promotion of the public health and for development of strength and vigor in the race. It is a most fertile field for the growth of bacteria, and therefore its production and distribution have been surrounded by more costly sanitary requirements than those of any other commodity in this, the third greatest milk producing and consuming state of the nation.

"2. Milk consumers are not assured of a constant and sufficient supply of pure and wholesome milk unless the high cost of maintaining sanitary conditions of production and standards of purity is returned to the producers of milk. If this is not done, large numbers dispose of their herds or engage in milk strikes, and remaining producers supply unhealthful milk or milk of lower quality because of financial inability to comply with sanitary requirements and to keep vigilant against contamination. Public health is menaced when milk dealers do not or cannot pay a price to producers commensurate with the cost of sanitary production, or when consumers are required to pay excessive prices for this necessity of life.

"3. Milk dealers must handle constant surpluses to meet the emergency requirements of normal variations in fluid consumption and to meet seasonal variations in production, which amounts in excess of fluid requirements must find a market in fluid use or in manufacture, and tend to demoralize the industry. Only one per centum of the milk dealers of the Commonwealth handle over sixty percentum of the milk sold by producers to dealers; and persons have often combined privately to establish practices or fix prices to the detriment of producers or consumers.

"4. Milk producers must make delivery of their highly perishable commodity immediately after it is

produced, and must generally accept any market at any price. Under the utilization method of payment prevailing in the milk industry, particularly in cities, the value of this market is unknown until the milk dealer sells the fluid milk and uses or disposes of the surplus. Furthermore, only the dealers have facilities for accurately weighing and testing milk This knowledge of weights, tests and uses is in the exclusive possession of the dealer. The producers' lack of control over their market is aggravated by the trade custom of dealers in paying weeks after delivery, keeping producers obligated to continue delivery in order to receive payment for previous sales, and permitting dealers to operate on the producers' capital without giving security therefor. Hence, milk producers are subject to fraud and imposition, and do not possess the freedom of contract necessary for the procuring of cost of production.

"WHEREAS, Public control of the milk industry in recent years is stabilizing the conditions therein, and a relaxation of control will cause a return to the unhealthful, uneconomic, deceptive and destructive practices of the past with respect to this paramount industry upon which the health and welfare of the Commonwealth largely depends; and

"WHEREAS, It is necessary to preserve and promote the strength and vigor of the inhabitants of this Commonwealth, to protect the public health and welfare, and to prevent fraud and imposition upon consumers and producers by continuing to treat the production, transportation, manufacture, processing, storage, distribution, and sale of milk in the Commonwealth of Pennsylvania as a business affecting the public health and affected with a public interest."

"Section 101. Legislative Purpose.—In the exercise of the police power of the Commonwealth, it is hereby declared that the production, transportation, manufacture, processing, storage, distribution, and sale of milk in the Commonwealth is a business affecting the public health and affected with a public interest, and it

is hereby declared that this act shall be and is hereby enacted for the purpose of regulating and controlling the milk industry in this Commonwealth, for the protection of the public health and welfare and for the prevention of fraud.

* * * * * * *

Section 103. Definitions; Construction.—The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise:

* * * * * * *

"'Milk dealer' means any person, including any store or subdealer, as hereinafter defined, who purchases or handles milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, within or without the Commonwealth. A producer who delivers milk to a milk dealer only shall not be deemed a milk dealer. A cooperative agricultural association or corporation of producers of milk, organized under the laws of this Commonwealth or of any other state, and engaged in making collective sales of milk for producers under contract with it, shall not be deemed a milk dealer, but shall be deemed a producer: Provided, however, That if such association or corporation distributes milk within this Commonwealth to stores, as defined in this act, or to consumers, as defined in this act, it shall be deemed to be a milk dealer as to that part of its business, and shall be governed by the provisions of this act applicable thereto: And provided further, That such cooperative agricultural association or corporation shall be governed by the applicable provisions of this act as to the prices at which it sells, markets, or bargains to sell milk within this Commonwealth to milk dealers and others.

* * * * * * *

"Section 301. Regulation of Milk Industry.—The commission is hereby declared to be the instrumentality

of the Commonwealth for the purpose of administering the provisions of this act and to execute the legislative intent herein expressed, and it is hereby vested with power to supervise, investigate and regulate the entire milk industry of this Commonwealth, including the production, transportation, disposal, manufacture, processing, storage, distribution, delivery and sale of milk and milk products in this Commonwealth, and including the establishment of reasonable trade practices, systems of production control and marketing area committees in connection therewith: Provided, however, That nothing contained in this act shall be construed to alter, amend or repeal any of the laws of this Commonwealth relating to the regulation of public utilities, or to the public health or to the prevention of fraud and deception, except as herein otherwise specifically provided.

"Section 302. Specific Powers not Impairment of General Powers.—The operation and effect of any provision of this act conferring a general power upon the commission shall not be impaired or qualified by the granting to the commission by this act of a specific power or powers.

* * * * * * *

"Section 501. Milk Dealers Required to File Bonds. —It shall be unlawful for a milk dealer to purchase milk from producers unless the milk dealer shall file with the commission a corporate surety, individual surety, or collateral bond, approved by the commission. Except as otherwise herein provided, the bond shall be in a sum equal to the value of the highest aggregate amount of milk purchased by the dealer from producers in any one month during the preceding calendar year, which value shall be computed according to lawful prices, and shall not in any event exceed one hundred thousand dollars ($100,000.00). The bond shall be upon a form prescribed by the commission, conditioned for the payment by the milk dealer of all amounts due, including amounts due under this act and the orders

of the commission, for milk sold by such producers to the milk dealer during the license year, upon such terms and conditions as the commission may prescribe.

"In the case of a milk dealer who pays producers in full each week for milk purchased by him from such producers, the bond shall be in a sum equal to fifty per centum of the value of the highest aggregate amount of milk purchased by the realer from producers in any one month during the preceding calendar year, which value shall be computed according to lawful prices, and shall not in any event exceed fifty thousand dollars ($50,000.00).

"Section 502. Computation of Amount of Certain Bonds.—Milk purchased by a milk dealer from producers outside the Commonwealth, and sold by such dealers as fluid milk within the Commonwealth, shall be included in computing the amount of such dealer's bond, except where such dealer has filed a bond for the protection of such producers with the state wherein the milk is purchased or with such producers. In such computation, the amount due for such milk shall be determined according to any applicable official prices or any lawful contract price.

"A milk dealer purchasing or intending to purchase milk from producers, but not so engaged during any month of the preceding calendar year, shall file a bond in a reasonable sum to be fixed by the commission, and within the time for filing his application such dealer shall request the commission to fix such sum.

"Section 503. Time of Filing.—The bond herein required shall be filed with the dealer's application for a license, and shall be filed within the time for filing such application.

* * * * * * *

"Section 801. Requisites of Orders, Fixing Price of Milk.—The commission shall ascertain, after a hearing in which all interested parties shall be given reasonable opportunity to be heard, the logical and reasonable milk marketing areas within the Commonwealth, shall

describe the territorial extent thereof, shall designate such areas by name or number, and shall ascertain and maintain such prices for milk in the respective milk marketing areas as will be most beneficial to the public interest, best protect the milk industry of the Commonwealth and insure a sufficient quantity of pure and wholesome milk to inhabitants of the Commonwealth, having special regard to the health and welfare of children residing therein.

"The commision shall base all prices upon all conditions affecting the milk industry in each milk marketing area, including the amount necessary to yield a reasonable return to the producer and to the milk dealer.

"The commission shall file at its office, with each order issued, a general statement in writing of the findings of fact in support of, and the reasons for, such order.

"The commission may, upon its own motion or upon application in writing, from time to time, alter, revise or amend an official order defining milk marketing areas or fixing prices to be charged or paid for milk. Before making, revising or amending any order defining milk marketing areas or fixing prices to be charged or paid for milk, the commission shall hold a hearing, after giving reasonable notice thereof to interested persons, of whom the commission has notice, and, in the case of any order affecting the public, after giving reasonable notice thereof to the public in such newspaper or newspapers as, in the judgment of the commission, shall afford sufficient notice and publicity: Provided, however, That upon application in writing from a person aggrieved by an order of the commission hereunder, filed within fifteen (15) days after the issuance of the order complained of, or upon its own motion, the commission may, within twenty (20) days after the effective date of such order, issue an order revising or amending such order without a further hearing, if such revision or amendment is based on the record of the hearing held prior to the issuance of such order.

"Every order made pursuant to this article, and any revision or amendment thereof, in which the commission fixes or changes the price of milk to producers or to consumers, or both, shall be subject to the approval of the Governor.

* * * * * * *

"Section 803. Prices to Producers.—The commission shall fix, by official order, the minimum prices to be paid by milk dealers to producers for milk: Provided, however, That the fixing of prices to be paid by milk dealers to producers for milk to be used solely in manufacturing shall be discretionary with the commission."

Statement of Facts.

The reasons for and purposes of milk control legislation in Pennsylvania are to be found in the preamble to the Milk Control Law of April 28, 1937, P. L. 417, 31 PS Section 700j, quoted above. Nowhere in the preamble or in the sections of the act quoted does it appear that the act was to be a narrow regulation of the milk industry in Pennsylvania. On the contrary, it would appear that the act was to provide for the fixing of minimum prices to be paid producers and to require milk dealers to file bonds for the protection of milk producers unless there were specific exceptions. The original Milk Control Board Law of January 2, 1934, Special Session P. L. 174, was amended by the Act of April 30, 1935, P. L. 96. This act was held not to be repugnant to the Constitution of the United States in *Rohrer* v. *Milk Control Board*, 322 Pa. 257, 186 A. 336 (1936). The Milk Control Law of April 28, 1937, P. L. 417, 31 PS Section 700j reenacted and extended the Milk Control Board Law. This Act was held to be in consonance with the Constitution of the United States in *Colteryahn Sanitary Dairy* v. *Milk Control Commission*, 332 Pa. 15, 1 A. (2d) 775 (1938). These decisions were relied upon by the

Supreme Court of the United States in *Milk Control Board* v. *Eisenberg Farm Products,* 306 U. S. 346, 350, 59 S. Ct. 528, 83 L. Ed. 752 (1939), holding that a state statute (the Pennsylvania Milk Control Board Law), providing for the licensing and bonding of milk dealers and the fixing of minimum prices to be paid producers, may be enforced against a milk dealer operating a milk receiving plant within the state for the purchase of milk for shipment beyond the state.

On December 19, 1938, seventeen of the respondents filed a bill in equity in the Court of Common Pleas of Dauphin County, Pennsylvania, against the Milk Control Commission, petitioner herein, and the Attorney General of Pennsylvania, to restrain them from instituting civil or criminal proceedings, except proceedings before the Commission itself, against the respondents, by reason of certain contracts between the respondents and milk producers from whom they obtained the milk they handled, and from demanding that the respondents comply with the bonding and price-fixing provisions of the Milk Control Law (R. 1, 4). The plaintiffs claimed that they received milk by virtue of consignment contracts rather than by a sale of the milk by producers to them. They contended that this arrangement relieved them of the obligation under the Act to pay producers minimum prices or to file bonds for the protection of producers with the Milk Control Commission under the terms of the Act. A preliminary injunction was awarded on injunction affidavits (R. 21). The eighteenth respondent intervened as a party plaintiff on March 24, 1939 (R. 59). Pleadings were completed on April 4, 1939, and for three days testimony was taken before a judge specially presiding (R. 66-284). Testimony was stopped without apparently being completed and counsel asked to argue the legal questions involved. The legal questions were argued before the court on December 8, 1939. On March 26, 1940,

the court entered a *decree nisi* that ended in a final decree on May 1, 1940 (R. 317, 352-355). In the meantime no more testimony had been taken, the contracts themselves disappeared from the records of the court, and material stipulated to be furnished the court as part of the record never was filed (R. 286, 287). On appeal the decree was affirmed in a terse opinion that failed to specifically answer any of the contentions of the appellants. Dissenting opinions were filed by the original Chancellor in the Dauphin County Court (R. 318) and by two of the Justices in the Supreme Court of Pennsylvania (R. 465). The decision in the Supreme Court of Pennsylvania was handed down on October 28, 1940 (R. 463). A petition for reargument was denied on November 26, 1940 (R. 471). This petition for certiorari followed.

Basis of Decisions Below.

The Court of Common Pleas of Dauphin County in granting the injunction in this case purported to examine the Milk Control Law of April 28, 1937, P. L. 417, 31 P. S. Section 700j, to ascertain whether this Act "makes consignment contracts subject to its provisions" (R. 292). "The questions, therefore, are whether the Act requires dealers who enter into consignment contracts to comply with the bonding and price-fixing provisions of the statute" (R. 298). The court concluded that the use of the words "buy" and "sell" in certain sections of the Act without the specific use of the word "consignment" meant that transactions of consignment were beyond the scope of the Act. The court did not concede that other language used in the Act could be broad enough to include numerous transactions, of which handling on consignment would be one, without specifying that the Act covered milk handled on consignment, bailment lease, sale or return, or other transactions besides sales.

Although the opinion of the court occupies 26 pages (R. 292a-317a), the court only once mentioned *Rohrer* v. *Milk*

Control Board, 322 Pa. 257, 186 A. 336 (R. 299), declaring the constitutionality of the original Milk Control Board Law of Pennsylvania, and did not mention any other cases from the Supreme or Superior Courts of Pennsylvania declaring the constitutionality of the Milk Control Law. The court denied the contention of the petitioner that the word "purchase", as used in the Pennsylvania Milk Control Law, should be interpreted in the same manner as the same word was interpreted by the Supreme Court of the United States in *United States* v. *Rock Royal Cooperative, Inc.,* 307 U. S. 533, 579-580, 60 S. Ct. 993, 83 L. Ed. 1446 (1939) (R. 312-313).

An examination of the opinion of the majority of the Court of Common Pleas of Dauphin County and the dissenting opinion filed therein by the original Chancellor (R. 318a-335a) shows that the dissenting opinion was written before the majority opinion. The decision of the Court of Common Pleas of Dauphin County created a classification of milk dealers that has no significance or basis so far as is revealed by the foundation or purpose of the Milk Control Law set forth in its preamble.

The effect of this interpretation was pointed out to the Supreme Court of Pennsylvania, and it was especially urged that such an interpretation reopened the question of the constitutionality of the Milk Control Law. In spite of this, the Supreme Court of Pennsylvania affirmed the decree of the court below without citing a single prior case that had come before it involving any question of the validity or interpretation of the Milk Control Law or its predecessor statutes in Pennsylvania. The dissenting opinion did not discuss the constitutional questions but did urge the adoption of the interpretation of the word "purchased", pronounced by the Supreme Court of the United States in *United States* v. *Rock Royal Cooperative,* 307 U. S. 533, 579-580 (R. 468-469).

Because, *inter alia,* the constitutional question raised had not been overtly disposed of by the Supreme Court of Pennsylvania, a petition for reargument was presented to that court. An answer to the petition was filed by respondents. Without opinion the Supreme Court refused to hear reargument (R. 509).

Specification of Errors to be Urged.

1. The Supreme Court of Pennsylvania erred in holding that although the Milk Control Law of April 28, 1937, P. L. 417, 31 P. S. Section 700j, does not violate the Constitution of the United States, this statute requires milk dealers who buy milk from producers to pay minimum prices prescribed by the Milk Control Commission of Pennsylvania but exempts milk dealers who sell or handle milk received on consignment from producers.

2. The Supreme Court of Pennsylvania erred in holding that although the Milk Control Law of April 28, 1937, P. L. 417, 31 P. S. Section 700j, does not violate the Constitution of the United States, it requires milk dealers who buy milk from producers to file bonds with the State for the protection of producers but exempts milk dealers who sell or handle milk received on consignment from producers from filing bonds.

3. The Supreme Court of Pennsylvania erred in sustaining the decree granting the injunction against the petitioner's demanding from the respondents that the consignment contracts entered into between them and producers of milk comply with the bonding provisions and price-fixing provisions of the Milk Control Law of April 28, 1937, P. L. 417, 31 P. S. section 700j, and the general orders of the Milk Control Commission of Pennsylvania so far as they relate to the purchase of milk.

Reasons for Granting the Petition.

1. The present case creates a distinction between milk dealers that has no basis in the legislative findings of fact set forth in the preamble to the Milk Control Law, and, therefore, by arbitrarily subjecting some milk dealers to price-fixing and bonding regulations denies the equal protection of the laws to the producers who send their milk to those dealers exempted from the Milk Control Law by this interpretation, and to the milk dealers who are required to pay minimum prices for milk and file bonds with surety or collateral for producers.

2. The Supreme Court of Pennsylvania, by creating the distinction it has, would appear to have created an irreconcilable conflict between this case and its prior decisions upholding the constitutionality of the Milk Control Law and its predecessor statutes. Either the Supreme Court of Pennsylvania was right in the present case and wrong in *Rohrer* v. *Milk Control Board,* 322 Pa. 257, 186 A. 336 (1936), *Colteryahn Sanitary Dairy* v. *Milk Control Commission,* 332 Pa. 15, 1 A. (2d) 775 (1938), *Eisenberg Farm Products* v. *Milk Control Board,* 332 Pa. 34, 200 A. 854 (1938), and *Harrisburg Dairies, Inc.* v. *Eisaman,* 338 Pa. 58, 11 A. (2d) 875 (1940), or else the Supreme Court of Pennsylvania was right in the latter cases and erred in its decision in the present case.

3. The Supreme Court of the United States in *Nebbia* v. *New York,* 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469, declared the validity of state regulation of minimum prices to be paid producers for milk. The present decision places a serious limitation upon the effectiveness of such legislation and makes a review of the decision desirable as a guide to all States having milk control laws. In a note discussing this case appearing in the University

of Pennsylvania Law Review, Vol. 89, No. 3, pages 403-405, January, 1941, the serious effect of the present decision is pointed out. The same note points out that milk control laws now exist in twenty states and cites the present acts in each of those states.

4. The constitutionality of the then milk control law of Pennsylvania, predecessor to the present Milk Control Law of Pennsylvania, was recognized and relied upon by the Supreme Court of the United States in *Milk Control Board* v. *Eisenberg Farm Products,* 306 U. S. 346, 59 S. Ct. 528, 83 L. Ed. 753 (1939). The present decision in some ways disregards this decision of the Supreme Court of the United States, and the refusal of a writ of certiorari would cast doubt upon the scope and effectiveness of both *Nebbia* v. *New York,* 291 U. S. 502; and *Milk Control Board* v. *Eisenberg Farm Products,* 306 U. S. 346.

5. The present decision is in conflict with *United States* v. *Rock Royal Cooperative, Inc.,* 307 U. S. 533, 579-580, 60 S. Ct. 993, 83 L. Ed. 1446 (1939), so far as the interpretation of the language of milk control laws is concerned. See 89 University of Pennsylvania Law Review, 405, notes 18 and 19. While a State is not compelled to accept the construction of statutes adopted by the Supreme Court of the United States, nevertheless, where, as in this case, the Supreme Court of the United States is the only court that has previously passed upon the construction of a certain type of legislation, a State court should not adopt a different construction unless different surrounding circumstances warrant the distinction.

6. The present decision effectively enables milk dealers to avoid the price-fixing and bonding provisions of milk control laws by creating a relationship with their producers, under circumstances in which the producers cannot refuse

to sign the contracts, that denies the Commonwealth of Pennsylvania and the producers affected control of the minimum prices that must be paid producers for milk, in order to maintain an adequate supply of pure and wholesome milk for the inhabitants of the Commonwealth. With the advent of spring the flush of milk will lead to the widespread use of consignment contracts and bring about the chaos in the milk industry that legislation and the decision of the Supreme Court of the United States in *Nebbia* v. *New York*, 291 U. S. 502, corrected.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of the Supreme Court of the United States, directed to the Supreme Court of Pennsylvania, requiring that court to certify the record and the case herein to the Supreme Court of the United States for its review and determination.

MILK CONTROL COMMISSION OF THE
COMMONWEALTH OF PENNSYLVANIA,
By JOHN M. McKEE, *Chairman*,
JOHN J. SNYDER, *Member*,
Petitioner.
CLAUDE T. RENO,
Attorney General,
FRANK E. COHO,
Deputy Attorney General,
Counsel for Petitioner.

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

Claude T. Reno, being duly sworn according to law, deposes and says that he is counsel for the petitioner herein; that he has read the within petition and knows the contents

thereof, and that the allegations in the said petition are true to the best of his knowledge, information and belief.

CLAUDE T. RENO.

Sworn to and subscribed before me this 14th day of February, 1941.

LUCILLE A. STROUP,
Notary Public.

[SEAL.]

My commission expires March 5, 1943.

Certificate of Counsel.

I hereby certify that the foregoing petition is in my opinion well founded and entitled to the favorable consideration of the Supreme Court of the United States, and that it is not filed for the purpose of delay.

CLAUDE T. RENO,
Attorney General.